REMARKS

At the time of the Office Action dated August 10, 2006, claims 1-11 were pending and rejected in this application.

Claims 1 and 4-5 have been amended, and care has been exercised to avoid the introduction of new matter. Specifically, claims 4 and 5 have been placed in independent form. Also, claims 1-3 have been amended to clarify the limitations recited therein. Applicants submit that the present Amendment does not generate any new matter issue.

On page 2 of the Office Action, the Examiner objected to the Abstract. In response, Applicants note that the Abstract has been amended.

CLAIMS 1-11 ARE REJECTED UNDER 35 U.S.C. § 102 FOR ANTICIPATION BASED UPON SKARPELOS ET AL., U.S. PATENT NO. 6,041,420 (HEREINAFTER SKARPELOS)

On pages 2-4 of the Office Action, the Examiner asserted that Skarpelos discloses the invention corresponding to that claimed. This rejection is respectfully traversed.

The factual determination of anticipation under 35 U.S.C. § 102 requires the identical disclosure, either explicitly or inherently, of each element of a claimed invention in a single reference.[1] As part of this analysis, the Examiner must (a) identify the elements of the claims, (b) determine the meaning of the elements in light of the specification and prosecution history,

[1] In re Rijckaert, 9 F.3d 1531, 28 USPQ2d 1955 (Fed. Cir. 1993); Lindermann Maschinenfabrik GMBH v. American Hoist & Derrick Co., 730 F.2d 1452, 221 USPQ 481 (Fed. Cir. 1984).

and (c) identify corresponding elements disclosed in the allegedly anticipating reference.[2] This burden has not been met. Moreover, the Examiner has failed to clearly designate the teachings in Skarpelos being relied upon the statement of the rejection. In this regard, the Examiner's rejection under 35 U.S.C. § 102 also fails to comply with 37 C.F.R. § 1.104(c).[3]

On page 3 of the Office Action with regard to claims 4 and 5, the Examiner asserted the following:

> The term "process" refers to a stream of activity defined by an ordered set of machine instructions defining the actions that the process is to take and the set of data values that it can read, write, and manipulate. Multiple processes may run concurrently and asynchronously within a fault tolerant computer system, see col. 3 lines 36-46).

The Examiner's cited passage of column 3, lines 36-46, however, has no readily apparent connection to the claimed step of assigning a distribution strategy. Since both claims 4 and 5 are directed to the claimed step of assigning the distribution strategy, the Examiner has failed to clearly describe the pertinence of the cited prior art as required by 37 C.F.R. § 1.104(c).

With regard to claim 1, Applicants note that claim 1 recites " assigning a plurality of audit trails as potential targets for an audit trail record." However, Skarpelos specifically teaches away from this limitation. Referring to lines column 4, lines 64-67, Skarpelos teaches the following:

> In accordance with the invention, each audit generator has an associated audit trail or ordered sequence of audit trail files for storing audit.

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[2] Lindermann Maschinenfabrik GMBH v. American Hoist & Derrick Co., supra.

[3] 37 C.F.R. § 1.104(c) provides:

> In rejecting claims for want of novelty or for obviousness, the examiner must cite the best references at his or her command. When a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable. The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified.

As previously described in column 4, lines 9-10, Skarpelos also states that "[a]n 'audit trail' is an ordered sequence of audit trail files." Referring to Figure 3 and column 5, lines 20-39, Skarpelos describes the process of establishing and operating an audit trail. Also, Skarpelos notes that many audit trail files may be spread across over several disk storage units. Thus, Skarpelos fails to teach that a plurality of audit trails are assigned, as a potential target, for an audit trail record. Therefore, Skarpelos fails to identically disclose the claimed invention, as recited in claim 1, within the meaning of 35 U.S.C. § 102. Applicants, therefore, respectfully solicit withdrawal of the imposed rejection of claims 1-11 under 35 U.S.C. § 102 for anticipation based upon Skarpelos.

Applicants have made every effort to present claims which distinguish over the prior art, and it is believed that all claims are in condition for allowance. However, Applicants invite the Examiner to call the undersigned if it is believed that a telephonic interview would expedite the prosecution of the application to an allowance. Accordingly, and in view of the foregoing remarks, Applicants hereby respectfully request reconsideration and prompt allowance of the pending claims.

Although Applicants believe that all claims are in condition for allowance, the Examiner is directed to the following statement found in M.P.E.P. § 706(II):

> When an application discloses patentable subject matter and it is apparent from the claims and the applicant's arguments that the claims are intended to be directed to such patentable subject matter, but the claims in their present form cannot be allowed because of defects in form or omission of a limitation, the examiner should not stop with a bare objection or rejection of the claims. The examiner's action should be constructive in nature and when possible should offer a definite suggestion for correction.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 09-0461, and please credit any excess fees to such deposit account.

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